IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3113 of 2007()

CC.150/2007 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY

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PETITIONER:

ABDUL HAKEEM, AGED 32 YEARS,
S/O.MOIDU, ARAKAT HOUSE,
(PO) ELANKODE.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

RESPONDENTS:

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1. STATION HOUSE OFFICER,
KOLAVALLUR POLICE STATION,
KOLAVALLUR.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3113 of 2007

Dated this the 9th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 325 and 452 r/w 149 I.P.C. He was not available for trial. The case against the co-accused proceeded. It would appear that the defacto complainant had compounded the offence against the co-accused who faced trial. All the co-accused were found not guilty and acquitted. The case against the petitioner was split up and refiled. The petitioner has not entered appearance so far. Coercive processes have been issued against the petitioner by the learned Magistrate. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful. The petitioner is now willing to appear and apply for bail and co-operate with the court for expeditious disposal of the case. The petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 482 Cr.P.C may be issued in favour of the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances

under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. Needles to say, it shall be open to the petitioner to urge before the learned Magistrate at the stage of Section 239/240 Cr.P.C that the defacto complainant has compounded the compoundable offences and that no charges are liable to be framed for other non compoundable offences. The learned Magistrate must consider such plea on merits and take appropriate decision at the stage of Section 239/240 Cr.P.C.

(R.BASANT, JUDGE)

rtr/-